

110TH CONGRESS  
2D SESSION

# H. R. 7080

To eliminate certain provisions of law providing benefits to trial lawyers,  
and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2008

Mr. BOEHNER (for himself, Mr. SMITH of Texas, and Mr. BLUNT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To eliminate certain provisions of law providing benefits to  
trial lawyers, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Stop Trial Lawyer  
5       Pork Act”.

1           **TITLE I—ELIMINATION OF**  
2           **BENEFITS FOR TRIAL LAWYERS**

3   **SEC. 101. FINDINGS.**

4           The Congress finds the following:

5           (1) In the spring of 2008, former powerhouse  
6           trial lawyer William Lerach was sentenced to a two-  
7           year term in Federal prison for his role in a \$250  
8           million criminal scheme of illegal kickbacks to plain-  
9           tiffs. Shortly before his sentencing, Mr. Lerach told  
10          the Wall Street Journal that illegal kickbacks to  
11          people recruited to file class action lawsuits is an  
12          “industry practice” in the American trial lawyer  
13          business. Mr. Lerach and fellow powerhouse trial  
14          lawyer Melvin Weiss, who collaborated on the  
15          scheme together as members of the law firm for-  
16          merly known as Milberg Weiss, are now both serving  
17          time in Federal prison for their roles in this criminal  
18          scheme.

19          (2) In an unrelated but equally troubling in-  
20          stance of corruption in the trial lawyer industry, one  
21          of the wealthiest trial lawyers in America, Richard  
22          “Dickie” Scruggs of Mississippi, pled guilty in  
23          March 2008 to bribing a State judge in order to ob-  
24          tain higher legal fees. Mr. Scruggs is now serving  
25          time in Federal prison.

1           (3) In May 2008, in response to these troubling  
2       developments, the minority leader, Mr. Boehner of  
3       Ohio, and the ranking minority member of the Com-  
4       mittee on the Judiciary, Mr. Lamar Smith of Texas,  
5       asked the Chairman of the Judiciary Committee,  
6       Mr. Conyers of Michigan, and the Speaker of the  
7       House, Ms. Pelosi of California, to schedule a bipar-  
8       tisan investigatory hearing to examine Mr. Lerach’s  
9       assertion that illegal activity is an “industry prac-  
10      tice” in the trial lawyer industry. In making the re-  
11      quest, the minority leader and the ranking member  
12      cited growing evidence that illegitimate and preda-  
13      tory lawsuits are destroying jobs, harming the na-  
14      tion’s economy, and endangering the prosperity of  
15      American families.

16           (4) The Washington Post has called for “a  
17      sober discussion about how best to achieve a fairer,  
18      more balanced legal system through comprehensive  
19      tort reform”.

20           (5) As of September 2008, the minority’s re-  
21      quest for a bipartisan congressional response to re-  
22      ports of trial lawyer corruption has been ignored,  
23      and no hearings have been conducted on the Milberg  
24      Weiss scandal or the broader issues raised by the re-  
25      cent trial lawyer scandals.

1           (6) Instead of investigating the trial lawyer in-  
2           dustry and examining the potential threat to Amer-  
3           ican jobs posed by the illegal activity Mr. Lerach  
4           calls an “industry practice”, the majority has pro-  
5           vided a steady flow of special legislative favors to the  
6           trial lawyer industry since the start of the 110th  
7           Congress. Numerous provisions have been inserted  
8           into bills on behalf of the trial lawyer industry by  
9           the majority, often with little scrutiny or debate.  
10          One of the most egregious instances of this trial law-  
11          yer pork is the new tax benefit contained in H.R.  
12          6049, which passed the House on March 21, 2008.  
13          It is estimated this provision will hand lawyers, and  
14          only lawyers, a \$1.6 billion windfall over the next 10  
15          years at the expense of U.S. taxpayers and Amer-  
16          ican jobs.

17          (7) According to the Center for Responsive Pol-  
18          itics, lawyers and law firms gave \$85 million to  
19          Democratic candidates during the 2006 election  
20          cycle. And in return for the stream of special legisla-  
21          tive favors it has received from the majority, the  
22          trial lawyer industry has further increased its polit-  
23          ical support for the majority during the current Con-  
24          gress. According to National Journal: “In the first  
25          quarter of 2008, the AAJ [American Association for

1 Justice, formerly known as the Association of Trial  
2 Lawyers of America] spent \$1.1 million on lobbying  
3 in Washington, according to disclosure reports it  
4 filed with Congress. Lawyers and law firms are also  
5 playing in the political arena—they are the No. 1  
6 sector among donors to Federal candidates in this  
7 election cycle, with \$83 million in contributions, ac-  
8 cording the Center for Responsive Politics. Of that  
9 amount, the American Association for Justice polit-  
10 ical action committee has contributed \$1.9 million to  
11 candidates, 95 percent to Democrats” (Swindell,  
12 Bill; “Trial Lawyers Mount a Comeback”, National  
13 Journal, July 12, 2008).

14 (8) Instead of providing special favors to ben-  
15 efit the scandal-plagued American trial lawyer indus-  
16 try, the 110th Congress should be investigating the  
17 industry. The trial lawyer pork inserted into legisla-  
18 tion by the majority during the 110th Congress  
19 should be shut down, and bipartisan investigatory  
20 hearings should be scheduled immediately to deter-  
21 mine the extent to which the illegal activity William  
22 Lerach describes as an “industry practice” in the  
23 trial lawyer business is destroying American jobs  
24 and harming the prosperity of working families.

1 **SEC. 102. ELIMINATION OF CERTAIN PROVISIONS OF LAW**  
2 **BENEFITTING TRIAL LAWYERS.**

3 (a) IN GENERAL.—Provisions of law that benefit trial  
4 lawyers to the detriment of consumers in any of the fol-  
5 lowing categories shall have no force or effect, whether en-  
6 acted before, on, or after the date of the enactment of  
7 this Act:

8 (1) Anti-protective orders, such as the Sunshine  
9 in Litigation Act of 2008 (H.R. 5884).

10 (2) Broadening maritime lawsuits such as the  
11 Coast Guard Authorization Act of 2008 (section 405  
12 of H.R. 2830).

13 (3) Prohibition of uniform Federal law and ex-  
14 pansion of medical liability lawsuits such as the  
15 FDA preemption legislation in the Medical Device  
16 Safety Act of 2008 (H.R. 6381).

17 (4) Expansion of environmental lawsuits such  
18 as the Carbon-Neutral Government Act of 2007  
19 (section 212(f) of H.R. 2635).

20 (5) Ending arbitration agreements such as the  
21 Arbitration Fairness Act of 2007 (H.R. 3010), the  
22 Fairness in Nursing Home Arbitration Act of 2008  
23 (H.R. 6126), and the Automobile Arbitration Fair-  
24 ness Act of 2008 (H.R. 5312).

25 (6) Expansion of asbestos lawsuits such as the  
26 Ban Asbestos in America Act of 2007 (H.R. 3285)

1 and the Bruce Vento Ban Asbestos and Prevent  
2 Mesothelioma Act of 2007 (H.R. 3339).

3 (7) Expansion of products liability lawsuits  
4 such as the Protecting Americans from Unsafe For-  
5 eign Products Act (H.R. 5913).

6 (8) Providing tax breaks for lawsuits such as  
7 the Renewable Energy and Job Creation Act of  
8 2008 (section 311 of H.R. 6049).

9 (b) RULE OF CONSTRUCTION.—A provision of an Act  
10 of Congress enacted after the date of the enactment of  
11 this Act that would not have effect by reason of subsection  
12 (a) may nonetheless take effect if the Act enacting that  
13 provision—

14 (1) by specific reference cites a report of the  
15 General Accountability Office that concludes that—

16 (A) such provision would not benefit trial  
17 lawyers to the detriment of consumers; and

18 (B) in the absence of such provision, there  
19 are no other means of remedy or enforcement  
20 including State and Federal oversight and State  
21 or Federal civil or criminal actions; and

22 (2) has been determined by the Congressional  
23 Budget Office not to have a negative fiscal impact.

1 **TITLE II—CLARITY AND TRANS-**  
2 **PARENCY IN THE CREATION**  
3 **OF PRIVATE RIGHTS OF AC-**  
4 **TION UNDER FEDERAL LAW**

5 **SEC. 201. SHORT TITLE.**

6 This title may be cited as the “Clarity and Trans-  
7 parency in Lawsuits Act” or “CATLA”.

8 **SEC. 202. FINDINGS.**

9 The Congress finds the following:

10 (1) Private rights of action shift enforcement  
11 and public policy decisions from regulatory agencies  
12 to private lawyers representing individual plaintiffs.

13 (2) Courts are routinely asked to recognize im-  
14 plied rights of action under Federal law. Such im-  
15 plied rights of action add unpredictability to the civil  
16 justice system and may have unforeseen adverse con-  
17 sequences.

18 (3) The merits of creating a private right of ac-  
19 tion should be subject to open debate and close con-  
20 sideration in Congress. Such determinations should  
21 not be left to guesswork by courts seeking to un-  
22 cover legislative intent.

23 (4) This legislation will fulfill the strong sug-  
24 gestion of the Supreme Court of the United States  
25 that “[w]hen Congress intends private litigants to



1 have a cause of action to support their statutory  
2 rights, the far better course is for it to specify as  
3 much when it creates those rights.” Cannon v. Uni-  
4 versity of Chicago, 441 U.S. 677, 717 (1979).

5 (5) On numerous occasions, Congress has en-  
6 acted statutes that explicitly provide a private right  
7 of action.

8 (6) Expressly stating any private right of action  
9 will eliminate uncertainty for both potential plain-  
10 tiffs and defendants, will reduce unnecessary, pro-  
11 tracted and costly litigation, and will avoid the con-  
12 fusion of inconsistent or conflicting court decisions.

13 **SEC. 203. CLARITY AND TRANSPARENCY IN PRIVATE**  
14 **RIGHTS OF ACTION.**

15 Any Federal law creating a private right of action  
16 shall include express language providing for such a right.  
17 No Federal or State court shall construe any Federal law  
18 to imply a private right of action in absence of such an  
19 express provision.

20 **SEC. 204. EFFECTIVE DATE.**

21 This Act shall take effect on the date of the enact-  
22 ment of this Act and shall apply prospectively and to those  
23 previously enacted laws that have not already been inter-  
24 preted by the Supreme Court to create a private right of  
25 action.

1 **TITLE III—PROSECUTING OR**  
2 **COUNSELING CLAIMS OR DE-**  
3 **FENSES THAT ARE FALSE,**  
4 **FRIVOLOUS, OR WHOLLY IN-**  
5 **SUBSTANTIAL**

6 **SEC. 301. PROSECUTING OR COUNSELING CLAIMS OR DE-**  
7 **FENSES THAT ARE FALSE, FRIVOLOUS, OR**  
8 **WHOLLY INSUBSTANTIAL.**

9 (a) IN GENERAL.—No attorney at law shall in any  
10 litigation, in or affecting commerce among the States or  
11 with foreign nations, prosecute or counsel any action, or  
12 assert any claim or defense, which is false, frivolous, or  
13 wholly insubstantial.

14 (b) SANCTION.—The sanction for a violation of this  
15 section shall consist of an order to pay to the party or  
16 parties the amount of the reasonable expenses incurred as  
17 a direct result of the violation, including reasonable attor-  
18 neys' fees and costs. The court may also impose additional  
19 appropriate sanctions, such as striking the pleadings, dis-  
20 missing the suit, or other directives of a nonmonetary na-  
21 ture, or, if warranted for effective deterrence, an order di-  
22 recting payment of a penalty into the court.

1       **TITLE IV—LAWSUIT ABUSE**  
2                   **REDUCTION**

3   **SEC. 401. SHORT TITLE.**

4       This title may be cited as the “Lawsuit Abuse Reduc-  
5   tion Act”.

6   **SEC. 402. ATTORNEY ACCOUNTABILITY.**

7       (a) SANCTIONS UNDER RULE 11.—Rule 11(c) of the  
8   Federal Rules of Civil Procedure is amended—

9           (1) in paragraph (1), by striking “may” and in-  
10       serting “shall”;

11          (2) in paragraph (2), by striking “Rule 5” and  
12       all that follows through “motion.” and inserting  
13       “Rule 5.”; and

14          (3) in paragraph (4), by striking “situated”  
15       and all that follows through the end of the para-  
16       graph and inserting “situated, and to compensate  
17       the parties that were injured by such conduct. Sub-  
18       ject to the limitations in paragraph (5), the sanction  
19       shall consist of an order to pay to the party or par-  
20       ties the amount of the reasonable expenses incurred  
21       as a direct result of the violation, including reason-  
22       able attorneys’ fees and costs. The court may also  
23       impose additional appropriate sanctions, such as  
24       striking the pleadings, dismissing the suit, or other  
25       directives of a nonmonetary nature, or, if warranted

1 for effective deterrence, an order directing payment  
2 of a penalty into the court” ; and

3 (4) by adding at the end the following:

4 “(7) APPEAL.—An attorney has the right to ap-  
5 peal a sanction under this subdivision. While such  
6 an appeal is pending, the sanction shall be stayed.”.

7 (b) RULE OF CONSTRUCTION FOR CIVIL RIGHTS  
8 CLAIMS.—Rule 11 of the Federal Rules of Civil Procedure  
9 is amended by adding at the end the following:

10 “(e) RULE OF CONSTRUCTION FOR CIVIL RIGHTS  
11 CLAIMS.—Nothing in subdivisions (a) through (c) of this  
12 rule shall be construed to bar or impede the assertion or  
13 development of new claims or remedies under Federal,  
14 State, or local civil rights law.”.

15 **SEC. 403. PREVENTION OF INTERSTATE FORUM-SHOPPING.**

16 (a) GENERALLY.—A person may not bring a personal  
17 injury claim in the court of a State if the person is not  
18 a resident of that State unless all or a substantial part  
19 of the acts or omissions giving rise to the claim asserted  
20 occurred in that State.

21 (b) ALTERNATE VENUE.—Notwithstanding sub-  
22 section (a) and subject to subsection (g), if a person can-  
23 not obtain jurisdiction in either Federal or State court  
24 against the defendant in the State where all or a substan-  
25 tial part of the acts or omissions giving rise to the claim

1 asserted occurred, then the claim may be filed in a court  
2 of another State, unless barred by the statute of limita-  
3 tions or otherwise time barred in the State where the ac-  
4 tion arose, if—

5 (1) the defendant's principal place of business  
6 is located in that State, if the defendant is a cor-  
7 poration, or

8 (2) the defendant resides in that State, if the  
9 defendant is an individual.

10 A person bringing such an action shall be required to es-  
11 tablish, by filing an affidavit with the complaint for con-  
12 sideration by the court, that such action cannot be main-  
13 tained in the State where the action arose due to lack of  
14 any legal basis to obtain personal jurisdiction over the de-  
15 fendant.

16 (c) JOINDER AND INTERVENTION.—In a civil action  
17 where more than one plaintiff is joined, each plaintiff must  
18 independently satisfy the requirements of this section. A  
19 person may not intervene or join in a pending civil action  
20 as a plaintiff unless the person independently satisfies the  
21 requirements of this section. If the requirements of this  
22 section are not satisfied by any such nonresident plaintiff,  
23 the court shall dismiss the claims of the plaintiff without  
24 prejudice to refile in a court in any other State or juris-  
25 diction.

1 (d) MOST APPROPRIATE FORUM.—If a person alleges  
2 that a substantial part of the acts or omissions giving rise  
3 to the personal injury claim occurred in more than State,  
4 the trial court shall determine which State is the most ap-  
5 propriate forum for the claim based on whether the private  
6 interests of the litigants and the public interest weigh in  
7 favor of the alternate forum.

8 (1) Factors to be weighed in considering the  
9 private interests include:

10 (A) the relative ease of access to sources of  
11 proof;

12 (B) the availability of compulsory process  
13 for attendance of unwilling and the cost of ob-  
14 taining attendance of willing witnesses;

15 (C) the distance from the site of the acci-  
16 dent or incident which gave rise to the litiga-  
17 tion, including the possibility of viewing of the  
18 premises, if appropriate;

19 (D) the possibility of harassment of either  
20 party in litigating in an inconvenient forum;

21 (E) the enforceability of any judgment ob-  
22 tained; and

23 (F) any other practical problems which  
24 contribute to the ease, expense, and expedition  
25 of the trial.

1 (2) Factors affecting the public interest include:

2 (A) the administrative difficulties for the  
3 forum courts;

4 (B) the desirability of having controversies  
5 decided in the locale where people are most af-  
6 fected by it;

7 (C) the burden of jury duty on citizens of  
8 a State that has little relation to the litigation;  
9 and

10 (D) consideration of the State law which  
11 must govern the case.

12 (e) DISMISSAL AND TOLLING.—If the court deter-  
13 mines that another forum would be the most appropriate  
14 forum for a claim, the court shall dismiss the claim. Any  
15 otherwise applicable statute of limitations shall be tolled  
16 beginning on the date the claim was filed and ending on  
17 the date the claim is dismissed under this subsection.

18 (f) DEFINITIONS.—In this section:

19 (1) The term “personal injury claim”—

20 (A) means a civil action brought under  
21 State law by any person to recover for a per-  
22 son’s personal injury, illness, disease, death,  
23 mental or emotional injury, risk of disease, or  
24 other injury, or the costs of medical monitoring  
25 or surveillance (to the extent such claims are

1 recognized under State law), including any de-  
2 rivative action brought on behalf of any person  
3 on whose injury or risk of injury the action is  
4 based by any representative party, including a  
5 spouse, parent, child, or other relative of such  
6 person, a guardian, or an estate; and

7 (B) does not include a claim brought as a  
8 class action.

9 (2) The term “person” means any individual,  
10 corporation, company, association, firm, partnership,  
11 society, joint stock company, or any other entity, but  
12 not any governmental entity.

13 (3) The term “State” includes the District of  
14 Columbia, the Commonwealth of Puerto Rico, the  
15 United States Virgin Islands, Guam, and any other  
16 territory or possession of the United States.

17 (g) NO IMPACT ON SUITS AGAINST FOREIGN DE-  
18 FENDANTS.—Nothing in this section shall be construed to  
19 limit Federal or State court jurisdiction over any defend-  
20 ant that is a foreign state or a citizen or subject of a for-  
21 eign state.

22 (h) STATE VENUE REQUIREMENTS.—Nothing in this  
23 section shall preempt or supersede any State law relating  
24 to venue requirements that otherwise would not permit a



1 person to bring, join, or intervene in personal injury claims  
2 in that State.

3 (i) *APPLICABILITY.*—This section applies to any per-  
4 sonal injury claim filed in State court on or after the date  
5 of the enactment of this Act.

○